
(2017) 01 KL CK 0086
In the High Court Of Kerala
Case No : 1 of 2017 (Z)

P. Sukumaran Nair

APPELLANT

Vs

Superintendent

RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 20](#) - Other suits to be instituted where defendants reside or cause of action arises
[Central Administrative Tribunal \(Procedure\) Rules, 1987](#), [35](#)

Citation : (2017) 01 KL CK 0086

Hon'ble Judges : C.T. Ravikumar, K.P. Jyothindranath

Bench : DIVISION BENCH

Advocate : O.V. Radhakrishnan, K. Radhamani Amma, N. Nagaresh, Mini R.Menon

Judgement

1. This original petition is directed against Ext.P3 order dated 4.10.2016 in M.A. No.1087 of 2016 in O.A.No.180/00831/2016 and Ext.P8 order dated 3.11.2016 in R.A. Nos.60 & 61 of 2016 in the said O.A, passed by the Central Administrative Tribunal, Ernakulam Bench. As per Ext.P3 order, the prayer of the petitioners for joining together to file the O.A in terms of the provisions under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 (for short the "Rules") was declined and consequently, the O.A was closed. It was observed therein that they could file separate applications. They sought for review of Ext.P3 order by filing R.A. Nos.60 and 61 of 2016. In fact, R.A. No.60 of 2016 was filed to review and recall the order in O.A.No.180/00831/2016 and to post it for admission ex debito justitiae. R.A.No.61 of 2016 was filed to review and recall order dated 4.10.2016 in M.A. No.1087/2016 and to allow it. The said review applications were dismissed as per Ext.P8 order. It is in the said circumstances that the captioned original petition has been filed mounting challenge against Exts.P3 and P8 orders. 2. For a proper consideration of the original petition, it is only proper and profitable to refer to Rule 4(5)(a) of the Rules. It reads thus:-

4(5)(a): Notwithstanding anything contained in sub-rules (1) to (3) the Tribunal may permit more than one person to join together and file a single application if it is satisfied, having regard to the cause and the nature of relief prayed for that they have a common interest in the matter. 3. A bare perusal of the said rule would reveal that in order to grant permission for joining together to file a single application having regard to the cause and the nature of the relief prayed for, they must have a common interest in the subject matter. 4. For considering the question whether in the case on hand Rule 4(5)(a) of the Rules is attracted and applicable, it is relevant to refer to the reliefs sought for by the petitioners in the O.A. They read thus:- I. to declare that the applicants are legally entitled to get 1st, 2nd and 3rd financial upgradations on completion of 10 years, 20 years and 30 years of service in the entry grade of Sorting Assistant which periods are the term of eligibility for obtaining financial benefits under Annexure A-24 MACP Scheme with effect from 14.06.1983, 01.08.1989, 07.05.1996, 27.05.1996, 27.05.1997, 27.05.1997 and 08.02.1991 respectively and the denial of the same is patently illegal, discriminatory and arbitrary and violative of Articles 14 and 16(1) of the Constitution of India; II. to issue appropriate direction or order, directing the respondents to grant 1st, 2nd and 3rd financial up gradation to the applicants on completion of 10 years, 20 years and 30 years of service in the entry grade of Sorting Assistant reckoning their service with effect from 14.06.1983, 01.08.1989, 07.05.1996, 27.05.1996, 27.05.1997, 27.05.1997 and 08.02.1991 respectively based on the promotional hierarchy under Annexure A-24 MACP Scheme and to pay the arrears of pay and allowances and other consequential benefits with effect from their respective dates of entitlement with interest within a time-frame that may be fixed by this Hon"ble Tribunal; III. to issue appropriate direction or order which this Hon"ble Tribunal deems fit, just and proper in the circumstance of the case and IV. to allow the above O.A. with costs to the applicants. 5. Before delving into the facts to find out whether in the case on hand Rule 4(5)(a) of the Rules is applicable or not, we are of the view that it will not be apropos to consider the real scope and object of Rule 4(5)(a). The said provision is virtually the crystallisation of the avowed intent and goal of making litigation less expensive to employees who got genuine grievance to be redressed and above all, to avoid the menacingly growing problem, often described as docket explosion. True that the word "may" used in Rule 4(5)(a) of the Rules would suggest existence of discretion in exercise of the power to grant permission to join together and to file a single application. 6. Ordinarily the word "may" refers discretion (see the decision in N. Nagendra Rao & Company v. State of Andhra Pradesh [AIR 1994 SC 2663]). However, the word "may" does not always import that the matter is discretionary with the court in exercising its function going by the earlier decision of the Hon"ble Apex Court in Kanwar Singh v. Delhi Administration [AIR 1965 SC 871]. The expression "may" and "shall" have been the subject of constant and conflict interpretation. The word "may" is a permissive or enabling expression. Sometimes, it is used merely to show that the Courts are given the jurisdiction to exercise a power and not to give them a direction to decline to exercise the jurisdiction or power granted to them. In

other words, there are cases in which for various reasons as soon as the person who is within the statute is entrusted with the power it becomes a duty to exercise. Where a statute directs the doing of a thing for the sake of justice or public good, the word "may" has to have the same force as the word "shall". Going by the decision in *Province of Bombay v. Khushaldas* reported in AIR 1950 SC 222, in construing a power the Court will read the word "may" as "must" when the exercise of the power will be in furtherance of the interest of a third person for securing of which the power was given. In such circumstances, we are of the considered view that construing the word "may" used under Rule 4 (5) (a) of the Rules as one importing discretion and not as "must" or "shall", will go against the grain of the legislation. For argument sake, if it is taken that it gives discretion, even then, one cannot lose sight of the salutary maxim "*discretio est discernere per legem sit justum*" means "discretion is to know through law what is just". Discretion when applied to court of justice means sound discretion guided by law and it must be governed by rule and must be legal and regular. In the said circumstances, viewing the usage of the word "may" in Rule 4(5) (a) of the Rules in any angle, we are of the view that to eliminate the element of arbitrariness which is antithesis to justice, it has to be held that wherever having regard to the cause and the nature of relief prayed for in an Original Application there exists a common interest in the matter, an application for joining together to file a single application shall be allowed lest it will defeat the very soul and purport of the said provision. 7. Now, we will consider the question whether in the case on hand, having regard to the cause and the nature of reliefs prayed for, as extracted above, the petitioners have a common interest in the matter. For considering that question appropriately, the meaning of "cause of action" has to be looked into. The learned Senior Counsel Sri. O.V. Radhakrishnan brought to our attention the decision of the Hon'ble Apex Court in *A.B.C. Laminart Private Limited v. AP. Agencies Salem* reported [(1989) 2 SCC 163] and *Indian Performing Rights Society Ltd. v. Sanjay Dalia* [(2015) 10 SCC 161]. Paragraph 12 in *A.B.C. Laminart's* case reads as hereunder:- "A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff." Regarding cause of action, it was held in *Indian Performing Rights Society's* case thus:- "Accrual of cause of action is a sine qua non for a suit to be filed. Cause of action is a bundle of facts which is required to be proved to grant

relief to the Plaintiff. Cause of action not only refers to the infringement but also the material facts on which right is founded. Section 20 of the Code of Civil Procedure recognises the territorial jurisdiction of the courts inter alia where the cause of action wholly or in part arises. It has to be decided in each case whether cause of action wholly or in part arises at a particular place. As held by this Court in Rajasthan High Court Advocates Association v. Union of India and Ors. [: AIR 2001 SC 416]. Thus, a Plaintiff can also file a suit where the cause of action wholly or in part arises." 8. From the decisions referred (supra), it is evident that a cause of action is a bundle of facts which taken with law applicable gives a right to relief to the plaintiff. The bundle of facts narrated explicitly in Ext.P1 Original Application regarding the service particulars, regarding the provisions applicable to financial upgradations, regarding the claims of the petitioners and their contentions regarding entitlement, are necessarily to be proved by them to obtain a relief. To speak succinctly regarding the reliefs, it is evident that the petitioners who are Sorting Assistants, by and large, seek for financial upgradations under the Modified Assured Career Progress Scheme (MACP Scheme) on completion of 10, 20 and 30 years service and according to them, in that regard, the direct entry grade has to be taken as Sorting Assistant and for the purpose, reckoning of service has to be from their respective dates of entry in the cadre of Sorting Assistant. True that they were appointed as Sorting Assistants based on Limited Departmental Competitive Examinations held on different dates. It is their common case that they have been continuing in the said cadre without promotion in the direct line of promotion in the hierarchy. It is also their contention that previous career advancements cannot be treated as "promotion" to deny financial upgradations under the MACP Scheme. Evidently, they based their case on Annexures A26 to A28, as according to them, the grievances for which they seek redressal stand covered in their favour, by Annexures-A26 to A28 orders/judgments. When such benefits are flowing from Annexure A24 MACP Scheme and for considering cases maturing in a financial year, a Screening Committee is contemplated and constituted, its non-consideration, in view of the bundle of facts narrated in Ext.P1 application along with its annexures, would give rise to a cause of action for them to approach the Tribunal. As stated earlier, M.A.No.1087 of 2016 was filed by the petitioners with the prayer to permit to them to join together to file a single application under Rule 4(5)(a) of the Rules. The said application was rejected as per Ext.P3 and consequently, the O.A. was closed. 9. It is evident that the prayer of the petitioners is to reckon the requisite length of service viz., 10 years to earn eligibility to get the first financial up gradation, 20 years to earn eligibility to get the second financial up gradation and 30 years to earn eligibility for the third financial up gradation, as the case may be, from the date of commencement of service in the cadre of Sorting Assistant treating the post of Sorting Assistant as entry cadre for the said purpose. True that if it is ultimately allowed, the applicants would be getting the benefit with effect from different dates. But that is not the decisive factor while considering the question whether the application filed under Rule 4 (5) (a) of the Rules could be allowed or not. The bundle of

facts that led to the prayers, as mentioned above, is sufficient to establish the common cause and the common interest, of the petitioners/applicants in the subject matter. So also the question whether such a relief is sought for with respect to 10 years grade, 20 years grade or 30 years grade is irrelevant. In short, the relief sought for would undoubtedly go to show that it is the denial of such a request and non-reckoning of the length of service for the purpose of granting the aforesaid financial upgradations in the aforesaid manner that constrained the applicants to approach the Tribunal. In such circumstances, we are of the considered view that the petitioners are having a common cause of action and the nature of the reliefs sought for is one and the same and in short, common interest in the subject. In that view of the matter, the impugned orders viz., Exts.P3 and P8 are liable to be interfered with. Accordingly, Exts.P3 and P8 orders are set aside. The applications submitted by the petitioners for joining together, to file a single Original Application, are allowed. The Tribunal shall consider the Original Application in accordance with law. The Original Petition is allowed as above.